PERSONAL EXPLANATION

Mr. HASTINGS of Florida. Mr. Speaker, on the vote on H.R. 3283, I was in the Intelligence Committee when the vote was cast. Had I been present, I would have voted ''no.''

PROVIDING FOR CONSIDERATION OF H.R. 5, HELP EFFICIENT, ACCESSIBLE, LOW-COST, TIMELY HEALTHCARE (HEALTH) ACT OF 2005

Mr. GINGREY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 385 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 385

Resolved, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (H.R. 5) to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system. The bill shall be considered as read. The previous question shall be considered as ordered on the bill to final passage without intervening motion except: (1) two hours of debate on the bill equally divided and controlled by the Majority Leader and the Minority Leader or their designees; and (2) one motion to recommit.

SEC. 2. During consideration of H.R. 5 pursuant to this resolution, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to a time designated by the Speaker.

The SPEAKER pro tempore. The gentleman from Georgia (Mr. GINGREY) is recognized for 1 hour.

Mr. GINGREY. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Florida (Mr. HASTINGS), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 385 is a closed rule that provides 2 hours of debate in the House, equally divided and controlled by the majority leader and the minority leader or their designees. It waives all points of order against consideration of the bill, provides that notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to a time designated by the Speaker, and it provides one motion to recommit.

Mr. Speaker, I rise today as the proud sponsor of H.R. 5, the Help Efficient, Accessible, Low Cost, Timely Health Care Act of 2005, or the Health Act, and to speak on behalf of both the rule and the underlying bill.

First, I would like to thank both the gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman of the Judiciary Committee, and the gentleman from Texas (Mr. BARTON), the chairman of the Energy and Commerce Committee, for their work on this issue, as this is not the first time the House of Representatives has considered this measure.

Mr. Speaker, H.R. 5 is a good bill that has passed this House in the 108th Congress with bipartisan support. Therefore this bill and its substance have been thoroughly debated both on this floor and in committee in the previous two Congresses.

As the sponsor of H.R. 5, I am very excited about the opportunity that we have today to strengthen our health care system for the sake of every household's health and every household's pocketbook.

Mr. Speaker, H.R. 5 is without question one of the best opportunities this Congress has to address the health care crisis we face today. There is no doubt among the American people, and there should be no doubt among Members of this Congress, that we need fundamental reforms to strengthen access to health care and to control the burgeoning cost of health care.

Having practiced for almost 30 years as an OB/GYN physician, I have not forgotten the experiences and the lessons that I learned on the front lines of medicine. I came to this Congress not only with a background in health care, but also with an important charge to do all that I could to make our health care system better.

And, Mr. Speaker, I can tell you in no uncertain terms, we have a problem. We are losing too many good doctors because of the skyrocketing costs of medical liability insurance and the threat of frivolous lawsuits.

These costs have been driven up by frivolous lawsuits and runaway awards that are more about someone's ship coming in, and I do not mean the injured plaintiffs, than the provision of justice for those who are injured.

In fact, the Department of Health and Human Services reports: ''The litigation system is threatening health care quality for all Americans as well as raising the cost of health care for all Americans.''

While I am no economist, it does not take a financial expert to know that with fewer and fewer practicing doctors and an ever-growing number of patients, the price of health care will inevitably go up and skyrocket out of the reach of the average consumer.

These increasing costs not only create a significant burden on the American people, but also increasingly aggravate the current strain on the Federal budget resulting in bigger and bigger deficits.

Therefore, Mr. Speaker, I, along with the gentleman from Texas (Mr. SMITH), introduced H.R. 5 as a simple, straightforward solution to reform and strengthen our civil justice system as it pertains to medical liability.

Mr. Speaker, I am thankful for the other 55 Members who have joined with us to cosponsor this bill. Mr. Speaker, the HEALTH Act will not, let me repeat, it will not limit economic awards such as medical bills and lost wages.

So if, as an example, a plaintiff has $10 million in economic damages, they can still collect $10 million for their economic damages. Again, there is no limit to the economic awards. H.R. 5 would, however, limit noneconomic awards to $250,000.

Additionally, punitive damages, if assessed, would be limited to $250,000 or twice the amount of economic loss suffered, whichever of the two is greater.

And, again, Mr. Speaker, as an example, if the economic damages were $5 million, and there were cause to impose punitive damages because of someone's deliberate action, deliberately harmed a patient, then the punitive damages could be $10 million in addition to the $5 million in economic, while the noneconomic would still be limited to $250,000.

The HEALTH Act will also make liability more equitable. If one or more parties is a defendant and ordered to pay damages, then each party pays damages proportional to their fault in the case as determined by the trier of fact, the jury.

Mr. Speaker, no one should have to take the blame and pay damages for the negligence of another defendant, as under current law. That is not justice and this bill will make sure that this inequity is eliminated.

Now, I realize that there are some who have tried to cloud the issue here, and they will certainly oppose this bill. And while I am not questioning anybody's motives, I have to insist that each and everyone of us ask ourselves, Where do my loyalties lie? Do they lie with the American people and their best interests, or do they lie with those special interest trial lawyers?

Some, some, seek to game our judicial system for big bucks, of which their clients, the actual victims, see very little.

□ 1715

For this reason, H.R. 5 includes a provision that will limit the contingency fees of lawyers and health care lawsuits on a sliding-scale basis. This provision will ensure that victims actually receive fair compensation for their damages and they are not bilked and taken advantage by certain greedy trial lawyers.

I cannot stress enough the importance of this bill, Mr. Speaker. Too many of our States are now in a condition of medical liability crisis. My home State of Georgia is one of those States in crisis. And while our legislature, along with Governor Sonny Perdue, has passed meaningful medical liability reform in this past session, there is still much work to be done to undo the damage inflicted on Georgia's health care system. Specifically, according to the Alliance of Specialty Medicine, over the past 3 years, 15 of Georgia's 20 active insurance companies have stopped issuing medical malpractice policies for doctors. This fact flies in the face of the argument from the other side that suggests that greedy insurers are just overcharging doctors for their insurance coverage.

And without this insurance coverage, doctors from emergency medical specialists, neurosurgeons, OB–GYN physicians, they are being chased out of their profession and leaving ordinary people without their specialty doctor and without efficient and timely health care.

Mr. Speaker, H.R. 5 is not the silver bullet to America's health care problems. However, in conjunction with things like associated health plans, which we just passed again, the Medicare Part D prescription drug benefit which will go into effect January 1 of 2006, and other important initiatives developed by the majority in this Congress, this bill is the right prescription for the American people at the right time and will put us well on the road toward recovery.

I would like to encourage my colleagues to give their full consideration to H.R. 5. This Congress has an important opportunity to pass this meaningful health care reform.

Mr. Speaker, the American people deserve no less from us. Again, I would encourage my colleagues on both sides of the aisle to support the rule and the underlying bill.

Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, I yield for the purpose of making a unanimous consent request to the gentleman from Virginia (Mr. MORAN).

(Mr. MORAN of Virginia asked and was given permission to revise and extend his remarks.)

Mr. MORAN of Virginia. Mr. Speaker, I rise in opposition to this rule.

Mr. Speaker, I rise in opposition to H.R. 5, which purports to help stem rising medical malpractice insurance premiums and relieve health care professionals, but, in reality, will have very little effect.

What this body should be considering today is comprehensive medical malpractice reform and this measure does not even come close to achieving this important goal.

Last night, the Rules Committee did not make in order several amendments, which taken together, would have achieved true comprehensive medical malpractice reform.

Earlier this year, I, along with BRIAN BAIRD, DUTCH RUPPERSBERGER and DAN LIPINSKI, introduced the Comprehensive Medical Malpractice Reform Act of 2005, which would have achieved three key goals, namely (1) constrain the cost of medical liability insurance and reduce unwarranted litigation; (2) protect the rights of patients who have been harmed to receive proper and justified compensation; and (3) improve overall the quality of health care in our country.

Unfortunately, we, along with several other Members, were denied the opportunity to improve H.R. 5 with these amendments.

One of our amendments that was denied debate would have set reasonable limits on non-economic damages.

We all know that a cap of $250,000 on non-economic damages is too low since some valid cases with catastrophic or lifetime injuries may merit additional compensation, particularly in the case of the negligent death of an infant.

Our amendment would have set a cap on awards for pain and suffering that is based on California's enactment into law of the Medical Injury Compensation Reform Act in 1975. Many provisions of H.R. 5, including caps on non-economic damages, are modeled after this California law.

Our amendment would have indexed non-economic damages at the rate of inflation, which comes to about $877,000 in today's market. Certainly a far more reasonable number than $250,000.

This amendment would also have weeded out frivolous lawsuits by going after lawyers who continue to file claims that are not substantiated by evidence or expert opinion. Courts would be able to impose a ''3 Strikes & You're Out'' law and suspend from practice for no less than one year, lawyers who file their third frivolous lawsuit.

Our comprehensive medical malpractice reform package also considers alternative dispute resolution, as a means of avoiding litigation, while at the same time, still addressing victims' rights. We modeled this provision after a successful program at Rush Medical Center in Illinois.

This first-ever hospital based mediation program has proven to be very beneficial to the hospital and other health care providers, and brings closure for individual plaintiffs and defendants.

Over the years, the number of suits against Rush has declined and other hospitals have conducted mediations and have reported favorable results. Our amendment would have given health care institutions the training necessary to implement mediation programs.

Another rejected amendment would have given liability protection to those health care providers, who in good faith, report to report to state medical boards regarding the competence or professional conduct of a physician. These good-faith reporting health care providers would not be held responsible for attorney fees and costs incurred as a result of legal action.

According to data from the National Practitioner Data Bank from 1990 to 2002, just 5 percent of doctors were involved in 54 percent of all medical malpractice payouts, including jury awards and settlements. More startling, the data shows that of the 35,000 doctors with two or more payouts during that period, only 8 percent were disciplined by state medical boards.

Health care providers need better whistleblower protections. Currently there is an imbalance between the legal obligation health care workers have to report errors or unusual incidents and the legal protections they have against retaliation once they report these incidents.

Greater liability protections for health care workers would help to ensure that future medical errors are not made, as well as give state medical boards the opportunity to work with colleagues on weeding out those doctors that provide an inadequate quality of care to patients.

Those who are going to support H.R. 5 today will return to their respective congressional districts during the August recess and brag to the doctors that they voted in favor of medical malpractice reform.

What they will not tell their constituents is that H.R. 5 is DOA when it is sent to the Senate for consideration, and that the other body would not think of entertaining legislation with inadequate caps on awards.

Nor will proponents of this bill reveal that H.R. 5, if signed into law, would not stem rising medical malpractice insurance premiums, because not one provision contained in this bill reforms the insurance industry.

Last night our colleagues on the Rules Committee squandered a valuable opportunity to actually fix the root problem of medical malpractice.

Let us send a message to the American people that we are now prepared to take the issue of medical malpractice reform seriously. I urge all my colleagues to vote against H.R. 5.

Mr. HASTINGS of Florida. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I thank the gentleman from Georgia (Mr. GINGREY), my friend, for yielding me the time. I should say Doctor Gingrey and that I want him to call me Attorney Hastings so we get it clear as to who we are around here.

Mr. Speaker, I rise today in strong opposition to this closed rule. Like a broken record, my friends on the other side on the aisle are yet again blocking every single Member of this body, Republican and Democrat, from offering an amendment to this ill-conceived legislation. I might add, no hearings were held regarding same.

Under this closed rule the majority is committing the greatest form of political malpractice. The Republican medical malpractice bill does nothing to lower the cost of health care for low- and middle-income families. Instead, insurance companies make out like bandits while the 45 million uninsured Americans continue to live without access to quality health care.

This is the third time in as many years that Republicans are bringing this incredulous bill to the floor under a closed rule. In the last 3 years, 67 amendments have been offered to the underlying bill in the Committee on Rules. Republicans have blocked all 67 of them from being considered by the House.

The gentleman from Michigan (Mr. CONYERS) and the gentleman from Michigan (Mr. DINGELL), the ranking Democrats of the two committees of jurisdiction, offered a fair and balanced substitute to this legislation last night. Their substitute takes steps to weed out frivolous lawsuits, requires insurance companies to pass their savings on to health care providers, and provides targeted assistance to physicians and communities that need it most. The House, however, will never have a chance to debate their proposal. As they have done so often in the past, what Republicans cannot defeat, they simply do not allow.

The gentleman from Illinois (Mr. EMANUEL) and the gentleman from Arkansas (Mr. BERRY) were also prohibited under the rule from offering their common-sense amendment. Their amendment would have taken out language from the underlying legislation that protects manufacturers of medical products, including pharmaceutical

companies, from being sued even when they knowingly place a faulty product on the market.

For example, when Merck did an internal test on the side effects of Vioxx, it reported that only ½ of 1 percent of those tested had incurred some type of cardiovascular event. A further investigation showed that Merck had actually doctored the study when, in fact, 14.6 percent of Vioxx patients were negatively affected by the medication.

Under the Republican medical malpractice bill, those who have died or been injured when taking Vioxx will have no legal ground on which to seek compensation for Merck's outright negligence. Many at home may be asking themselves, How could Congress knowingly protect a manufacturer from being sued if it continues producing a product that it knows is faulty and can cause real harm or even death to someone? What about corporate responsibility? What about protecting the lives of innocent Americans?

To them I say, if the underlying legislation becomes law, what I just described will become the norm. The majority have made it crystal clear that they do not believe irresponsible companies and manufacturers should be held responsible for their actions no matter the harm they inflict. As my colleague and good friend on the Committee on Rules, the gentleman from Massachusetts (Mr. MCGOVERN) said last night, welcome to the Committee on Rules, where democracy goes to die.

Mr. Speaker, President Bush and the Republican Party have unfairly singled out trial lawyers as the root cause of skyrocketing medical malpractice insurance rates across the Nation. They suggest that the prevalence of ''pain and suffering'' awards in malpractice suits have forced insurance companies to raise their liability insurance rates and force doctors out of business. This suggestion is both superficial and wrong.

H.R. 5 does nothing to help doctors with high malpractice insurance premiums. Study after study have confirmed that while the insurance company is raising premiums for doctors at a record pace, the amount they pay out for lawsuits has remained stable. The insurance industry is price-gouging physicians and lying to the public all to justify limiting the rights of victims so that the industry can add to its already record-setting bottom line.

This bill is a distraction from the real problems that exist in America's failing health care system. Physicians and lawyers are pointing fingers at each other while insurance companies are quietly and quickly running to the bank.

Solutions to our Nation's health care woes do exist, Mr. Speaker, but they go beyond blaming one group of Americans and involve more than one easy-to-fix resolution. I urge my colleagues to oppose this closed rule and reject the underlying bill.

Mr. Speaker, I reserve the balance of my time.

Mr. GINGREY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this mention of greedy, gouging insurance companies, I just want to point out to my colleague that the only insurance company that still is offering medical malpractice insurance in the State of Georgia is Mag Mutual. And in 2004 they made $7 million on their rather conservative investment portfolio and still lost money because of the claims paid and defending all of these frivolous lawsuits.

Mr. Speaker, I yield 2 minutes to the gentlewoman from West Virginia (Mrs. CAPITO), my colleague on the Committee on Rules.

Mrs. CAPITO. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I rise today in strong support of the Help Efficient, Accessible, Low-Cost, Timely Healthcare Act of 2005, commonly referred to as the HEALTH Act.

If it seems like you have seen me speaking on this before, that is because I have. The House of Representatives has done their part and passed this much-needed legislation several times during my service in Congress. It is my sincere hope that the other body will answer the call of millions of Americans who have been impacted with the loss of their doctor and help rein in an out-of-control medical liability system.

I am very optimistic we can achieve this goal, primarily because my home State of West Virginia has passed very similar legislation. If West Virginia's Legislature and Governor can put politics aside and work for the common good, then this Congress should be able to do the same.

Five years ago the medical liability climate in West Virginia reached a fevered pitch. Countless physicians, especially specialists, were beginning to leave the State, their home State, because of the prohibitively high cost of insurance premiums. Our largest trauma center was forced to close because of lack of physicians. Many of these physicians were orthopedists, OB–GYNs, and neurologists, and for a rural State with already limited access to specialists, this was a critical blow to health care accessibility.

Individuals throughout the State were extremely concerned about the ability to find a doctor, keep a doctor, and about the doctor that they love and trust leaving the practice of medicine. Thankfully, the leaders in West Virginia enacted sensible reforms that have stabilized our healthcare delivery system.

As a matter of fact, the hospitals in West Virginia have said one of the biggest benefits to this legislation, very similar to the legislation we have today, is that it stabilized the situation so they can now recruit and retain physicians in the State of West Virginia.

The HEALTH Act is needed on a Federal level because other States have not had the success of my State. This act puts in common-sense reforms to the tort system. I urge all to support the rule and to realize that this approach, which is similar to California's approach and West Virginia's approach, can work successfully and can be passed in a bipartisan way.

Mr. HASTINGS of Florida. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from Massachusetts (Mr. MCGOVERN), my good friend who serves on the Committee on Rules.

Mr. MCGOVERN. Mr. Speaker, I thank the gentleman from Florida for yielding me time.

I rise in opposition to this rule and to the underlying legislation. This bill is a perfect example of the ironclad control that the pharmaceutical industry has over the Republican leadership of this House. It is so in your face, it is so out in the open, it takes my breath away.

Instead of improving the medical industry and providing protection to its consumers, H.R. 5 provides sweeping liability protections to drug manufacturers. H.R. 5 does nothing to address the dramatic escalation of insurance premiums and health care costs. Forty-five million Americans, 16 percent of our population, do not have health insurance. Placing caps on the punitive damages that could be awarded to victims of medical malpractice will not provide one single American with health insurance.

From the onset this bill has been handled improperly: no mark-ups, no amendments, no hearings. In fact, for the third time in 3 years, as the gentleman from Florida (Mr. HASTINGS) has pointed out, the Committee on Rules' Republicans have prevented any House Members from offering amendments to this bill.

Last night the committee Republicans rejected all 15 amendments offered, including an amendment that would have stripped the bill of the special protections for irresponsible drug companies. Over the past 3 years, Committee on Rules' Republicans have rejected a whopping 67 amendments to medical malpractice legislation. Eliminating amendments and shutting down debate is not how this House should operate.

Why has this bill been rushed to the floor, bypassing both the Committee on the Judiciary and the Committee on Energy and Commerce despite the abundance of startling information in the headlines regarding the misconduct of drug industry giants like Merck, the creator of the deadly drug Vioxx?

According to testimony given by FDA scientist Dr. David Graham before the Senate Committee on Finance, Vioxx may have caused as many as 55,000 deaths and 160,000 hearts attacks. Mr. Speaker, how can we reward a company that has knowingly created, marketed and distributed a drug which has caused 55,000 deaths?

Well, that is exactly what this bill does. By providing across-the-board immunities to drug and device manufacturers, the pharmaceutical industry would never be held accountable for injuring or even killing people.

Without the threat of full liability, there are no financial incentives for drug companies to keep life-threatening drugs like Vioxx off the market. Vioxx was always a dangerous drug. From its inception in 1999, Merck knew that Vioxx significantly increased the chance of hearts attacks and cardiovascular problems. In 1999 and 2000, two clinical trials showed that people taking Vioxx had a fivefold increase in hearts attacks.

□ 1730

It was not until 2002, after multiple requests from the FDA, that Merck reluctantly change its warning label to include the severe risk of heart attack.

Mr. Speaker, this was too little, too late. Vioxx should have been pulled from the market years ago, and its victims and victims' families should have been compensated appropriately.

It was not until September 2004, after several more studies and testimonies from high-level FDA officials that Merck voluntarily withdrew Vioxx from the market. And here we are, less than a year later, considering a bill that provides immunity for drug manufacturers that create and distribute unsafe, possibly deadly, drugs.

Mr. Speaker, everyone is aware of the dangers of Vioxx, and the fact that Merck continued selling it knowing of its dangers. How can this House in good conscience reward the drug industry for bad behavior? The American people deserve a better bill, a bill that actually protects, not endangers them.

I would like to say to my friends on the other side of the aisle: if you want to protect irresponsible drug companies, that is your choice. Go right ahead and do it. But I am interested in protecting people. The least you could do is allow us to vote up or down on amendments that would hold the drug companies accountable.

There is no reason why, none whatsoever, why this rule needs to be closed. It is a disgrace that this has been brought to the House floor under a closed rule. I urge my colleagues to vote ''no'' on the rule and ''no'' on the underlying bill.

Mr. GINGREY. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Florida (Mr. WELDON), an internal medicine specialist.

Mr. WELDON of Florida. Mr. Speaker, I thank the gentleman for yielding me this time; and as he stated, I practiced internal medicine, but that was not the only type of medicine I practiced. I also practiced defensive medicine.

We can talk about medical malpractice premiums and the costs for doctors, and we can talk about suing drug companies, and we can talk about high premiums in States like West Virginia, which we heard about from the gentlewoman from West Virginia, how specialists leave the States. We had that problem in Florida. We had the neurosurgeons in Orlando threatening to leave because of the high premiums in Orlando. The trauma center would have been downgraded from a level one to a level two center.

But those are really not the issues. The real issue here is the incredible, incredible cost of defensive medicine. And I practiced it every day. I confess, I ordered extra tests to keep myself from being sued. And if you think this is just anecdotal, it is not, my colleagues. This was studied very nicely at Stanford University.

This is old data. It was published in the Quarterly Journal of Economics, 1996. They looked at California, and they looked at just two diagnostic codes, unstable angina, eschemic heart disease; and the study showed after the medical malpractice reforms went in place in California, the charges to the Medicare plan declined significantly. Guess what? Morbidity and mortality did not go up. Quality was maintained.

They estimated in that study, in 1996 dollars, that defensive medicine cost our health care delivery system $50 billion a year. It is estimated by today's dollars that it is well over $100 billion a year.

Now, my colleagues want to take care of the uninsured and they want prescription drugs for senior citizens? Then do something about this very costly system.

Mr. WELDON of Florida. Mr. Speaker, the study earlier referred to follows:

[From Forbes Magazine, Jan. 27, 1997]

RX: RADICAL LAWYERECTOMY

(By Peter Huber)

How do you trim $20 billion a year from Medicare? That's about what it will take to stave off bankruptcy. The easiest way: amputate lawyers.

It can be done. In 1995 Congress immunized community health care centers from malpractice suits. The federal government now covers the claims incurred by these federally subsidized clinics—claims are heard by a judge, not a jury, and there are no punitive awards. The clinics save an estimated $40 million in malpractice insurance. That funds treatment for an additional half-million indigent patients.

Why stop there? The country spends about $8 billion a year treating elderly heart-disease patients. Cap awards, abolish punitive damages, implement a few other direct, financial limits on medical malpractice suits, and you reduce hospital expenditures on cardiac patients by 5% to 9%.

If limits like these had been written into federal law, nationwide spending on cardiac disease in the late 1980s would have been $600 million a year lower. Extrapolate these results to medical spending generally—a debatable but reasonable enough basis for estimation—and you find that tort reform would save the country as a whole well over $50 billion a year.

But how much more negligent medicine would that encourage? How many more cardiac patients would die? How many more would get inferior treatment and suffer a second heart attack as a result? The best estimate: None at all. Nor would any true victims of negligence go uncompensated. The reforms we're talking about here don't eliminate liability, they just place sensible limits on windfalls and double-dipping. They are in fact already part of the law in many states.

The numbers I cite come from a very important paper, ''Do Doctors Practice Defensive Medicine?'' written by Daniel Kessler and Mark McClellan, both of Stanford University. The paper appeared in the May 1996 Quarterly Journal of Economics.

The authors analyze data on all elderly Medicare beneficiaries hospitalized for serious heart disease in 1984, 1987 and 1990. The study correlates spending for medical care with state tort laws. About three patients in five were treated in states that placed no direct limits on rights to sue. But two in five were hospitalized in states that did. Direct liability limits have clear, strong effects on medical spending, the study concludes.

But that's just the first half of the story. Previous studies—most notably one conducted by Harvard Medical School in 1990—asked panels of doctors to review patient files and attach subjective judgments about adverse outcomes and deficient treatment. Much of the ''negligence'' identified in this way had no significant impact on the ostensible victim. Studies like this didn't reveal much about the consequences of malpractice litigation because they didn't pin down the consequences of malpractice itself.

With elderly cardiac patients there are objective standards for assessing ineffective care: Patients die, or they end up back in a cardiac ward not long after discharge. Analyzing the record on these solid criteria, Kessler and McClellan reach a second, clear conclusion: None of the liability reforms studied ''led to any consequential differences in mortality or the occurrence of serious complications.''

If liability doesn't force doctors to provide better treatment, why does it boost the cost of medicine so sharply? Unlimited liability gets you more medicine, not better. Lawyershy doctors administer tests willy-nilly, and hand off patients to specialists with great alacrity. They know that the surest way to avoid liability is to dispatch your problem patient to someone else—a lab technician or another doctor. This can go on indefinitely. It's very expensive. And medically useless.

Congress has generally left medical malpractice reform to the states. But when Medicare and Medicaid patients sneeze, it's the federal Treasury that catches cold. No principle of federalism requires federal taxpayers in Montana to pay for Mississippi medicine ordered up by the lawyers there, not the doctors or patients.

The best place for Congress to balance the Medicare budget is on the backs of trial lawyers. These lawyers are not old, not poor and not needed.

Mr. HASTINGS of Florida. Mr. Speaker, I am very pleased to yield 3 minutes and 20 seconds to the very distinguished gentleman from Illinois (Mr. EMANUEL).

Mr. EMANUEL. Mr. Speaker, I want to thank my colleague for yielding me this time.

I was a sponsor of the Vioxx amendment, to strip out the protection of the pharmaceutical industry. As Americans are watching this debate here, here we are on the floor debating about protecting the pharmaceutical industry from all liability in a protection that no other industry in America would receive, and on the other side of the screen the American people are going to be watching the trial on Vioxx

down in Texas, where a marathon runner, who was also a personal trainer, and who took Vioxx for 6 months, died a premature death. They will see what this Congress is doing on that civil case.

Now, we know from the head of FDA that by their estimate 55,000 Americans died because of Vioxx and the medication. Yet my colleagues want to deny that man's family their day at trial and give this industry, the only industry in America, a single protection.

Last year, my colleagues voted for a prescription drug bill to give the pharmaceutical industry $132 billion in extra profit, and now you want to give them liability protection. This Congress is like the gift that keeps on giving. You just do not know how to stop yourself.

Now, there is a place to redress these grievances. It is called the courtroom. With 55,000 deaths, have you no shame? Have you no respect for what is going on in America? The American people will see what is being done and understand the cost. But Merck, with Vioxx, is not the only pharmaceutical company. There is beckstra, accutane. There is phen-fen. Those are just some of the medications where other companies have not provided the FDA the material they needed to make the decision, and then, after the fact, after the consequences, those drugs get pulled.

What is ironic about this whole case and this whole piece of legislation is very simple. Just a year ago, many of our colleagues on the other side of the aisle joined us in agreeing that the FDA did not have the authority, the capability, or the funding to regulate the drug market. We were talking about in this very Chamber, on both sides of the aisle, setting up another whole entity to regulate this agency. So now what do we do in the dark of night, and nonrelevant to the medical malpractice legislation, you want to stick in a provision to protect the pharmaceutical industry because the FDA approval somehow gives them a Good Housekeeping seal when you said here in the well that the FDA was not doing its job.

George Orwell would smile upon this Chamber for the hypocrisy that runs free. You have done it with the pharmaceutical industry in the prescription drug bill last year, with $132 billion in additional profits over 10 years, and now you give them liability protection that no other industry in the Nation has, to our knowledge. And all the while Americans will watch their TVs, read in their newspapers, and listen on radio of the case of an individual's death because of the medication he took that was prescribed, and Merck, the company, had data before that drug got approved that it would lead to heart attacks and premature deaths.

The right forum is the American court. Yet my colleagues want to do this. Let us have an up-and-down vote. Do not be scared. Do not hide behind some little rule. Come on out here. Put it out on the table, and let us have a vote. The Senate knew it was wrong and pulled it out. So do not hide behind the rule. If this is what you want to do, let us have an up-and-down vote. You can put your votes right up there if you want to stand with this industry, and then the American people can see what it is all about.

I would recommend to my colleagues on the other side that there is a gift ban here. You gave them $132 billion in additional profits last year. There is a gift ban. The gift has got to stopping giving to the pharmaceutical industry.

Mr. GINGREY. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Georgia (Mr. PRICE), my physician colleague, an orthopedic surgeon.

Mr. PRICE of Georgia. Mr. Speaker, I thank the gentleman for yielding me this time, and I rise in support of the rule and the bill. This debate, this issue is about patients and the principal challenge that we have. What is the principal challenge that we have? I believe it is that it is imperative that we provide a system which allows patients to have access to the highest level of health care, and we are losing this across this Nation for a variety of reasons, but not the least of which is the lottery mentality of our court system.

Our system is woefully broken. As a physician for over 25 years, as an orthopedic surgeon, I have seen a vast array of medical and surgical problems. I have also stood back and been astounded, astounded by certain surprising occurrences.

One was with a patient who was cared for by one of my partners. Not too long ago, across this land, we asked patients to identify whether their surgery was to be on the right side or the left side so that we did not operate on the wrong leg or the wrong arm. And we asked the patient in the preoperative area to identify which side was the correct side. This one patient marked the incorrect side. The patient did. He marked the wrong side on purpose. On purpose.

Thankfully, thankfully there were enough checks and balances in place in this hospital that it was caught just before the surgery began. When asked why he marked the wrong side, he said, I thought I'd take a chance and see if I could make some money.

This is the lottery mentality. This is the climate that we are in out there. Our system is woefully broken. The mentality in the system that we have right now drives hospitals to close, and it drives doctors to end their practice. And patients, then, lose the ability to see their doctor.

To ensure Americans have access to the highest-quality care, I encourage my colleagues to support both the rule and the underlying bill.

Mr. HASTINGS of Florida. Mr. Speaker, I am very pleased to yield 4 minutes to the gentleman from Arkansas (Mr. BERRY), who is a farmer and a pharmacist.

Mr. BERRY. Mr. Speaker, I thank the gentleman from Florida for yielding me this time.

Mr. Speaker, I continue to be amazed as I listen to this debate. I can tell you this, I know the difference between butter beans and turnip greens, and I am wondering if these folks from Georgia have figured that out. They said they passed tort reform, and still the insurance companies cannot make any money. They might need to retrain their docs.

I do not know what is going on in Georgia, but I can tell you this, you guys pass this bill and you are going to live under it too. It is going to be the law of the land, and you are going to have to live under it. When your people get hurt, when your family gets damaged, when somebody that does not know what they are doing hurts your family, when a drug company sells you a bad product and kills somebody in your family, you are going to live under this bill, too. Think about it. Is that what you really want to do?

Are you so in bed with the drug companies and the insurance companies that you just cannot pass up, as my colleague from Illinois just talked about, you just cannot pass up another opportunity to give them money? It is absolutely amazing.

The pharmaceutical industry in this country has proven beyond a shadow of a doubt that they do not care about people or anything else. All they care about is money. Give us more money. And this Republican Congress and this Republican President have given them money in the most unashamed possible way that I can imagine.

If you all really believe this is going to solve the health care cost problems in the United States, I have some ocean front property in Arkansas I would love to talk to you about.

This is the most incredible thing I have ever seen. How you have the audacity to come before this body and even make the claim that that is going to happen is beyond me, and then criticize me and my side of the aisle because we are protecting trial lawyers? My goodness alive, that is just absolutely amazing.

The bottom line here is this: just like the gentleman from Massachusetts said, the Committee on Rules is where democracy goes to die in the U.S. House. You will not even let us have an up-or-down vote. Let us have a vote. If you want to protect the drug companies, let it stand alone. Let us let you be on the voting block. Let your name be public and say, I protected the drug companies, I protected the insurance companies, I want to do all I can to help those people. Be accountable.

You are so proud of this, boy, I would get up here and I would really talk about it a lot. And when you go home, you are going to meet that person that you kept from having their day in court and that you ruined their life and there was nothing they could do about it because of this law. They are going

to be all over the place. Let us just hope it is not someone that is near and dear to you.

For me, there is not enough money to repay if you hurt my children or grandchildren. My grandson is sitting out here today. I have got three other grandchildren. There is not enough money in the whole wide world. And yet you all would limit their ability to be repaid to $250,000. That is, on its face, absolutely and utterly ridiculous; and why you would want to do that is beyond me.

□ 1745

And why you would want to do that is beyond me, and why you would want to do it for the drug companies is certainly beyond my ability to understand. But if you do it, you will ultimately be held accountable.

Mr. GINGREY. Mr. Speaker, I yield myself 15 seconds.

Mr. Speaker, eight States have specifically focused on pharmaceuticals and punitive damages and statutorily provide an FDA regulatory compliance defense against such damages. Those States are: Arizona, Colorado, Illinois, New Jersey, North Dakota, Ohio, Oregon and Utah.

Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania (Mr. PITTS).

Mr. PITTS. Mr. Speaker, I rise in support of the rule and the bill. Without a doubt, medical liability lawsuits and the extravagant awards drain vital resources from our health care system, and the most important resource being drained is doctors.

In Chester County, Pennsylvania, where I live, which happens to be the wealthiest county of the 67 counties in Pennsylvania, we have no more trauma surgeons. One-third of Pennsylvania doctors in high-risk specialties said they plan to leave the State because of the huge malpractice insurance rates. Seventy percent of Pennsylvania doctors have considered closing their practice because of the cost of medical malpractice insurance.

A few years back, the Lancaster Health Alliance, another county I represent, was planning to open a new clinic to serve the poor in Lancaster, but a $1.5 million hike in malpractice insurance forced them to abandon the project.

In Pennsylvania and many other States, we have a crisis on our hands, and the cost of this crisis is measured in terms of doctors leaving, hospitals closing, new clinics not being built, and patients not being served. H.R. 5 is the right answer for the crisis. I urge my colleagues to support the legislation and the rule.

Mr. HASTINGS of Florida. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. CROWLEY).

Mr. CROWLEY. Mr. Speaker, I oppose this rule, and I oppose this overreaching bill. A lot of people on the other side of the aisle are trying to claim that caps on awards for victims of medical malpractice will help doctors. Some are claiming that caps on awards will even help patients.

The other side has one crucial fact wrong. Capping medical malpractice awards does not mean insurance rates will fall. A recent study, looking at premiums over the last 5 years, found that claims payments have been stable while premiums have more than doubled. In fact, malpractice insurers' total premiums were three times higher than total payments in 2004.

If we want to decrease medical malpractice insurance costs for doctors, let us talk about that. Let us talk about reducing medical errors by improving hospital resources and funding for graduate medical school education. Or let us talk about investigating insurance companies' pricing practices. But to pretend that this is medical malpractice awards set by juries and judges who have actually listened to victims' grievances, to put the blame for rising insurance costs on victims, that is not only cruel, it is completely false.

If we want to cap medical malpractice awards, let us call it for what it is: a gift to the insurance industry at the expense of innocent victims.

This bill hurts patients wrongly injured or killed by bad doctors, does not lower medical malpractice rates for the so many good doctors out there, and really only benefits the insurance companies. The other side would rather drive a wedge between two noble professions: doctors and lawyers. I say that is wrong-headed. Vote down this rule; and more importantly, vote down this bill.

Mr. GINGREY. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, listen to these numbers: 19, the number of States in a full-blown medical liability crisis; 72 percent, the number of Americans who favor a law that guarantees full payment for lost wages and medical expenses, but limits noneconomic damages; $70- to 127 billion a year, the cost of the defense of medicine, which could be significantly reduced by medical liability reforms; $10.2 billion, the amount of money paid out by licensed commercial insurers in 2002 for medical liability claims; 100 percent or more, the increase in liability insurance premiums that one-third of the Nation's hospitals saw in 2002; 48 percent, the proportion of America's medical students in their third or fourth year of medical school who indicated that the liability crisis was a factor in their choice of specialty, threatening patients' future access to critical services; 3.9 million, the increase in the number of Americans with health insurance if Congress were to pass common-sense reforms.

Mr. Speaker, we are not talking about anybody's right to a redress of grievances when they have been injured because of a physician or provider of care or a facility or hospital practicing below the standard of care in that local community. There are no limits on economic awards. As I said earlier, that could be $5 million. And as I said earlier, when you get into a courtroom and you listen to the plaintiff's attorney calculating the cost, the economic cost, a new home because of a disability access need costing $450,000, an au pair, a companion to go to the movies with the person that was injured, and on and on and on, these economic costs sometimes are astronomical.

Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey (Mr. PASCRELL).

Mr. PASCRELL. Mr. Speaker, I rise as an opponent to the rule that is before us, and I will vote ''no'' also on the bill.

I would like to go back to one of the speakers just a few moments ago who mentioned in his State Mag Mutual. Mag Mutual is one of the 12 largest monoline medical malpractice insurers in the United States. And in 2004, coincidentally, they had 216 percent above what is adequately called their surplus. They have excess surplus.

We have a crisis, we have a problem, but I personally believe that we are attacking the wrong folks in order to resolve the problem. The key words here are insurance reform. It is true that due to premium increases, the cost of practicing medicine in the State of New Jersey is rising at an unsustainable pace, but not for the reasons that the proponents of H.R. 5 are claiming.

According to the Kaiser Family Foundation, medical malpractice premiums are not rising because of claims or settlements. In fact, medical malpractice pay-outs have increased by 5.7 percent since 2001, and this is the chart to prove it. Payouts increased by 5.7 percent and 120 percent increase in premiums, you have the wrong dog in this race. Premiums nationally have risen over 120 percent in the same period. That is the real story.

Monetary caps are not the answer. You have not addressed the example that was put before this body: The Vioxx. Nobody wants to face that. Nobody wants to address that. A woman injured, cannot provide, cannot have a pregnancy, cannot give birth to a child, $250,000 cap. You have to be kidding me. I want that to be addressed. Monetary caps are not the answer.

Actually, the premiums in States without caps on damages are almost 10 percent lower than those with caps.

In California, Mississippi, Nevada, Ohio, Oklahoma, and Texas, insurers have continued to raise premiums despite the fact that these States passed caps. And what happened in California, they had Proposition 103. That is what leveled off, if we consider it leveling off, the antitrust exemption that rates began to finally come down.

It is a gift to the insurance companies, the HMOs, the medical institutions that harm patients and are filled

with liability protections for manufacturers of defective or harmful health care products. This is plain and simple.

The Committee on Rules prevented any Member from offering amendments to this legislation. It is too serious. We are talking about life or death in many cases; the substitute amendment of the gentleman from Michigan (Mr. CONYERS) and the gentleman from Michigan (Mr. DINGELL) that takes steps to stop frivolous lawsuits, insurance reform and targeted assistance to the physicians in the communities who need it most. For these reasons I urge my colleagues to defeat the rule and this piece of legislation, H.R. 5.

Mr. GINGREY. Mr. Speaker, I yield myself 3 minutes.

A couple of minutes ago I was given some statistics. I want to continue in that vein. The gentleman from New Jersey (Mr. PASCRELL) just mentioned the situation in California. Of course, this bill, H.R. 5, is patterned after that very successful MICRA legislation, Medical Injury Compensation Reform Act, passed in 1979 in California. Here we are some 26 years later, and medical malpractice insurance premium rates have stabilized, growing only at about 6 percent per year.

But listen to these numbers in regard to whether people continue to get just compensation for their injuries when you do have a cap on so-called noneconomic or pain and suffering.

September 2003, 9-year-old boy, San Francisco jury awarded $70.9 million in compensatory damages after finding a hospital and a medical clinic negligent for failing to diagnose his metabolic disease.

December 2002, $84.250 million total award, Alameda County, a 5-year-old boy with cerebral palsy and quadriplegia because of delayed treatment of jaundice after birth.

January 1999, $21.789 million award, Los Angeles County, newborn girl with cerebral palsy and mental retardation because of a birth-related injury.

October 1997, $25 million total award, San Diego County, boy with severe brain damage, spastic quadriplegia, mental retardation because of too much anesthesia administered during a procedure.

November of 2000, $27.573 million, San Bernardino, California, 25-year-old woman with quadriplegia because of failure to diagnose a spinal injury.

July 2002, $12.5 million, Los Angeles County, 30-year-old homemaker with brain damage because of lack of oxygen during recovery from surgery.

Mr. Speaker, people are not being denied access to an opportunity to redress their grievances when they have been injured when someone has practiced below the standard of care. No physician member of this body, no physician in this United States would want anything like that. We want people to recover when one of our colleagues have indeed caused that harm.

Mr. Speaker, we know of cases in our own hospitals where lawsuits are brought against one of our colleagues where we know they practiced below the standard of care, and we are the biggest cheerleaders for the plaintiffs in those situations. H.R. 5 has nothing to do with that.

Mr. Speaker, we are just limiting this noneconomic so-called pain and suffering. It has worked in California, and it will work in the rest of the country.

Mr. Speaker, I reserve the balance of my time.

□ 1800

Mr. HASTINGS of Florida. Mr. Speaker, I yield myself such time as I may consume.

I went to school and almost became a physician. I do not know what there is about some of the damages that the gentleman from Georgia calls so-called damages. I do not know how brain damage, losing my legs, double mastectomies, those kinds of things, are so-called punitive damages. If doctors commit those kinds of errors, they ought to be held accountable, and juries are the best place for that to occur.

Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Oregon (Mr. DEFAZIO).

Mr. DEFAZIO. I thank the gentleman for yielding time.

Mr. Speaker, this is a perfect bill. It must be perfect because not one amendment will be allowed, including my amendment. Now, the Republicans say free markets. We want free markets. How come we do not have a free market in insurance, I ask them? The insurance industry is exempt from the antitrust law. They can and do get together legally and collude to drive up the price of insurance for every American in every line of insurance. Not just medical malpractice. That is legal for the insurance industry. It is not legal for the two corner gas stations. They would go to Federal prison. It is not legal for any other industry in America. But they would not allow a vote on my amendment just to say, let us have a market in insurance. Let us take away their antitrust exemption. Let us have competition. Maybe that will lower prices. They seem to believe in competition until their pockets are being filled at election time by an industry that is exempt from competition. But they say they are going to solve the problem here tonight with this bill.

Now, the other thing the gentleman from Georgia is not talking much about is why we should exempt the pharmaceutical industry for deadly and dangerous drugs, people who have died and been seriously injured, from any liability. What other industry in America has that exemption? So this is sort of a perfect bill; is it not? The two largest contributors to the Republicans are the pharmaceutical and insurance industries. The insurance industry is exempt from competition and antitrust law, and now they want to exempt the pharmaceutical industry from having to pay people for having killed their spouse, their children, or having perhaps caused so-called brain damage or a so-called heart attack or something else with a defective product. That is unbelievable.

I wish the gentleman would spend the rest of his time talking about why the pharmaceutical industry needs an exemption when they have actually maimed or killed people. If we are going to extend it to the pharmaceutical industry, how about the automobile industry? We have got a lot of industries in America that could use an exemption from liability that have to pay and go to court now. But, no, they are saying the pharmaceutical industry should not have to do that, because, as we know, they have the best interests of Americans at heart. That is why they do not want to allow us to import cheaper drugs from Canada, and they are threatening the Canadian Government. That is why they are the most consistently profitable industry in America when our seniors are cutting their drugs in half. No, they need protection from this horrible scourge of being sued when they have sold a defective product like Vioxx and actually concealed the tests from the American people and perhaps from the FDA.

I wish the gentleman would spend the rest of his time defending the antitrust exemption for the insurance industry, because if he believes in free markets, he should support my amendment. It should be part of this bill. We should get to vote on that. We should say, let us have competition in insurance. That will help the doctors. It is not the total solution, there are other things that need to be done, but that certainly would help the doctors.

It would help every other American with every other line of insurance, too. Your car insurance might come down. Your homeowner insurance might come down. But they do not want to allow that vote, and now they want to have a huge new exemption for the pharmaceutical industry. I guess we know who is lining up behind their next campaign with very generous contributions.

Mr. GINGREY. Mr. Speaker, I yield myself 2 minutes.

I am sure the gentleman from Oregon was not questioning anyone's motives in his remarks. I think maybe the section of H.R. 5 that says no punitive damages to a pharmaceutical company, a drug maker or a medical products manufacturer that makes something, a drug or a medical product, that has been ruled safe, it has gone through all FDA testing, there is absolutely no reason to suspect that the drug or product is defective based on phase 1, phase 2, phase 3 trials, and then something turns up. It only relieves that manufacturer of punitive damages. As I say, Mr. Speaker, maybe we ought to call that section the Oregon model, because that is the exact same thing that exists under Oregon law.

Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, I am very pleased to yield 1½ minutes to the gentleman from Illinois (Mr. LIPINSKI), a new Member, the son of a former Member of the United States Congress, our former colleague Bill Lipinski.

Mr. LIPINSKI. I thank the gentleman from Florida for yielding me this time.

Mr. Speaker, I rise today in opposition to the closed rule on H.R. 5 and the underlying bill. There is a need for medical malpractice reform, and the amendments offered in the Rules Committee could have made this a good bill for improving access and care. But the Rules Committee refused consideration of all the amendments, including one that I offered that would have directly reduced the number of malpractice cases in court by facilitating the use of mediation. Mediation has proven to be a cost-effective and timely way to settle malpractice cases. Rush Medical Center in Chicago now has one-third of its cases go to mediation instead of litigation. Other hospitals around the country have begun to try to attempt similar programs, but have hit the roadblock of a lack of mediators with a medical background who are available.

My amendment would have provided grants to set up mediation programs and to train medical malpractice mediators. This would have done exactly what this bill purports to do, reduce the burden of litigation.

We should have the opportunity to debate this and all the amendments proposed. I urge my colleagues to vote against this rule and vote against this bill.

Mr. GINGREY. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, in addition to about 75 percent of the American public that are in favor of placing caps on noneconomic damages, let me just list a few other organizations that are in favor of that as well: The American Academy of Family Physicians, the American Academy of Pediatricians, the American Association of Home and Services For the Aging, the American College of Emergency Physicians, the American College of Nurse Midwives, the American College of Obstetricians and Gynecologists, the American College of Surgeons, the American Health Care Association, the American Hospital Association, the American Medical Association; the absence, of course, of the American Trial Lawyers Association.

Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, I yield myself the balance of my time.

One of the previous speakers, the gentleman from Georgia (Mr. PRICE), said that some victims have won, quote, the malpractice lottery. Tell that to, for example, Ms. Linda McDougal, who had a double mastectomy because a doctor misdiagnosed her condition and recommended this radical procedure. Does the gentleman from Georgia (Mr. PRICE) really think that Ms. McDougal has won some sort of lottery? I just cannot believe that.

Key findings from ''The Growth of Physician Medical Malpractice Payments: Evidence From The National Practitioner Data Bank'' show that the average annual malpractice claim payout rose only 4 percent a year from 1991 to 2003, in line with the average overall increase in the cost of health care.

Time will not permit me to go into a litany of statistics and supporters, but I do want to point out that the thought seems to be that people do not want to practice medicine. Well, the number of doctors increased throughout the Nation from 1985 to 2001, even in States with no malpractice award caps. The study showed that there were 497,140 professionally active doctors in 1985 and 709,168 in 2001. The report found little evidence that doctors are leaving one State for another State with malpractice award caps.

Mr. Speaker, I urge Members to vote ''no'' on the previous question so I can amend the rule to make in order the Emanuel-Berry amendment. This amendment would strike from the bill a provision granting immunity to manufacturers of medical products from being sued when it is discovered that those manufacturers withheld potentially damaging information from the FDA and the public. The amendment was offered in the Rules Committee yesterday, but, like all the rest, was defeated on a straight party-line vote.

Mr. Speaker, I ask unanimous consent to print the text of the amendment immediately prior to the vote on the previous question.

The SPEAKER pro tempore (Mr. BASS). Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. HASTINGS of Florida. Mr. Speaker, what is a provision protecting the drug companies doing in a bill that is supposed to be about doctors' malpractice premiums? How does this provision ever get into this bill in the first place? My guess is that many of my colleagues who support this bill have been asking the same question and would vote to strike it from the bill if they were given the opportunity. But because of this closed rule, the House will not have the opportunity to strike this embarrassing sop to the pharmaceutical industry from this legislation. Defeating the previous question will give Members a chance to vote on what has now been dubbed the ''Merck loophole.''

This section is not just bad policy, Mr. Speaker, it is almost criminal. Every day we read about more evidence that the pharmaceutical company Merck concealed information about the risks of its FDA-approved drug Vioxx. I do not think any of my colleagues want to find themselves in the position of defending people who hid information about this drug that could have saved someone's life.

Vote ''no'' on the previous question so we can debate this important amendment. I want to make it very clear that a ''no'' vote will not stop us from considering this legislation. We will still be able to consider the medical malpractice legislation on the floor today. However, a ''yes'' vote will prevent us from considering the Emanuel amendment to strike this ill-conceived language.

Again, vote ''no'' on the previous question.

Mr. Speaker, I yield back the balance of my time.

Mr. GINGREY. Mr. Speaker, I yield 1½ minutes to the gentleman from Indiana (Mr. BURTON).

Mr. BURTON of Indiana. Mr. Speaker, we had a situation a few years ago where on the homeland security bill at about 11 o'clock at night, they stuck language in the bill which prohibited class action lawsuits against the manufacturers of thimerosal, which is a preservative that is in vaccines, and 50 percent of it is ethyl mercury. We have hundreds of thousands of kids that have been damaged by ethyl mercury in vaccines. It is called thimerosal. The language in this bill, and I want to read it to you, says, ''No punitive damages may be awarded against the manufacturer or distributor of a medical product, or a supplier of any component or raw material of such medical product, based on a claim that such product caused the claimant's harm where,'' and it goes on.

The way I read this, these people who have been damaged, and we have been fighting for years to get them the ability to get money from the Vaccine Injury Compensation Fund, one of the negotiating things that we have had is the language that is being put in this bill that is going to stop that. What this means simply is that if this passes with this language in it, the way I understand it, those people, those thousands and thousands of people that have children that have been damaged by thimerosal, mercury, in vaccines will have no recourse, and they cannot get any restitution out of the Vaccine Injury Compensation Fund the way it is right now. I do not know how this got in here, but I can tell you right now, this is not good. I want to support my chairman and the Rules Committee, but this language is not good.

Mr. DREIER. Mr. Speaker, if the gentleman will yield, there is an exception that is provided for vaccine injury in the bill. I think it is also very important to note, as the gentleman from Georgia said earlier, that this deals with equipment and pharmaceutical products that have been approved by the Food and Drug Administration. That is the reason that this is provided, because that kind of direction that has come from the FDA is included.

Mr. BURTON of Indiana. Thimerosal was approved as well. You say there is

language in here that does exempt vaccines?

Mr. DREIER. Section 10, Effect on Other Laws, there is a vaccine injury exemption that is included in the bill. I have got it right here. I am happy to show it to the gentleman.

□ 1815

Mr. GINGREY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in concluding this debate on House Resolution 385, I would like to encourage my colleagues to not only support this rule but also the underlying bill. I want to thank all of those who spoke on behalf of the rule and applaud them for their willingness to address this problem in an honest and an open fashion.

Unfortunately, some opponents of this legislation seem content to demagogue the issue and pander to those special interests who are determined to keep the playing field tilted in their favor.

Mr. Speaker, I include for the RECORD letters of the many organizations that have been submitted to me in support of this bill.

LETTERS OF SUPPORT

A. PIAA (Physician Insurers Association of America)

B. American Osteopathic Association

C. American College of Obstetricians and Gynecologists

D. American Academy of Ophthalmology

E. American College of Surgeons

F. The Society of Thoracic Surgeons

G. The Doctor's Company

H. Californians Allied for Patient Protection

I. Physicians Insurance

J. JPMSLIC Insurance Company

K. American College of Physicians

L. American Society of Anesthesiologists

M. Premier Advocacy

N. American Association of Nurse Anesthetists

O. American Medical Directors Association

P. American Association of Orthopaedic Surgeons

Q. American Medical Association—Michael Maves, Executive Vice President

R. Chamber of Commerce

S. American Benefits Council

T. American College of Cardiology

U. American Academy of Otolaryngology—Head and Neck Surgery

V. American College of Osteopathic Family Physicians

Mr. Speaker, some might not want to see reform, but I have list upon list and a binder full of organizations and individuals who recognize that we have a problem, and they see H.R. 5 as the solution. Over 200 medical organizations from the American Medical Association, the American College of Surgeons, to the American Dental Association to the United States Chamber of Commerce have urged this Congress to act now, not later.

A recent survey by the Health Coalition on Liability and Access found that 72 percent of Americans favor a law that would guarantee full payment for economic losses like lost pay and medical costs, but would limit non-economic costs. With an overwhelming majority of the American people and most health care organizations in support of the language of this legislation, we in the House of Representatives cannot stand idly by with a good commonsense solution at our fingertips.

Again, this bill in no way, shape, or form limits the amount an individual can receive in economic damages. If someone's hospital bill or lost wages costs $50,000, $500,000, or even $5 million, they can still be awarded the full amount in damages less attorneys' costs and fees. If there are punitive damages that are applicable because a physician or health care provider deliberately, deliberately, causes injury to a patient, then punitive damages can be awarded double the economic damages. So if it were $5 million worth of economic damages, then there could be $10 million worth of punitive damages.

The same thing, Mr. Speaker, is applicable to medical product manufacturers and the pharmaceutical industry that produces these drugs. The other side would make us believe that they were granted complete immunity. Absolutely not, if they knowingly withheld information. Only economic damages are limited; and punitive damages, as I say, would be calculated by a responsible formula.

Finally, H.R. 5 ensures that victims benefit from a fairer system and they receive a greater portion of their damages. Ultimately, the biggest winner in H.R. 5 is the American consumer-patient who will have better access to health care and lower health care costs. I think that alone testifies to the importance of this bill and the need to put partisanship aside for the sake of the people who sent us here to represent them. They deserve no less.

Again, I want to thank the gentleman from Wisconsin (Chairman SENSENBRENNER) and the gentleman from Texas (Mr. BARTON) for their timely consideration of this bill, as well as the gentleman from Texas (Mr. SMITH), who is the Courts, the Internet, and Intellectual Property Subcommittee chairman of the Committee on the Judiciary and floor manager of H.R. 5.

I again would encourage my colleagues to support House Resolution 385 and H.R. 5.

Mrs. CHRISTENSEN. Mr. Speaker, as most members of this body know, I am a physician, and a member of physician organizations who practiced family medicine for 21 years. So, I know this issue first hand, and I am deeply troubled about patients who will be denied just compensation under the approach this bill takes—caps on damages.

I am also outraged that physicians are being used as pawns in the game of political one-upmanship this bill plays with its narrow, misguided and ineffective focus and attack on trial lawyers.

And we all know, because we read the same reports that H.R. 5 bill will not fix the problem. The causes of high premiums are not the result of medical malpractice lawsuits or increasing payouts. In fact, a recent report commissioned by the Center for Justice and Democracy clearly demonstrates that over the last 5 years, there has been little to no increase in malpractice payouts.

Despite this, there have been humongous increases in malpractice insurance premiums. In fact, the report found that many of the leading malpractice insurers have substantially increased their premiums while decreasing their actual claims payments and reducing the amount they project to payout in the future, but significantly increasing their surplus or profits.

Let me just give you a few examples from the report so everyone understands:

1. In fact, in 2004 alone, the leading medical malpractice insurers took in about three times as much in premiums as they paid out in claims.

2. And, in 2004, the 15 leading malpractice carriers, taken in sum, increased their premiums by 9.3%, yet their losses fell by 21.1%.

3. Between 2000 and 2004, the premiums of the 15 leading medical malpractice insurers have more than doubled, yet the amount they paid out in claims during this same period remained constant. In fact, during this time frame, gross premiums increased 134.5% while gross payouts increased by 9.6%.

4. Another way to put it: between 2000 and 2004, the increase in premiums collected by the 15 leading medical malpractice insurers on a net basis was twenty-one times as great as the increase in payments on a net basis.

So not allowing for Democratic alternatives which sought to address the full scope of the malpractice problem, and provide a real remedy has precluded us from having a bill on the floor that merits our vote.

My colleagues please don't disrespect patients and their families and their pain and suffering; and do not play the hard working doctors.

Vote no on H.R. 5 and then let's pass a bill that truly addresses the crisis that many factors—like lack of insurance, language barriers, limited providers of color, inadequate funding for prevention and malpractice insurance coverage is creating.

Mr. SENSENBRENNER. Mr. Speaker, I wish to include in the CONGRESSIONAL RECORD an explanation for my decision not to participate in legislative consideration of H.R. 5, the "Help Efficient, Accessible, Low-Cost, Timely Healthcare ('HEALTH') Act of 2005."

House Rule III(1) states:

> Every Member . . . shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question.

House precedents establish that "where the subject matter before the House affects a class rather than individuals, the personal interest of Members who belong to the class is not such as to disqualify them from voting."

As a result, House precedent has held that a Member's ownership of common

stock in a corporation, ''was not, under House precedents, sufficient to disqualify him from voting on'' legislation that benefitted the corporation in which that Member held stock.

I currently own shares in at least two corporations that may benefit from the enactment of H.R. 5. Shares of these corporations are generally held, and do not represent ''uniquely-held'' financial interests. As a result, my participation in legislative consideration of H.R. 5 would not appear to violate current House Rules and established precedent. However, as in all matters susceptible to subjective examination, there are no bright line rules to determine whether a Member should not participate in legislation that may benefit that Member in a personal or financial manner.

In common parlance, the term ''conflict of interest'' is subject to various interpretations. However, the House Ethics Manual states that this term ''is limited in meaning; it denotes a situation in which an official's conduct of his office conflicts with his private economic affairs.''

The House Committee on Standards of Official Conduct has admonished all Members ''to avoid situations in which even an inference might be drawn suggesting improper action.''

The Committee on Standards and Ethics has also endorsed the principle that ''each individual Member has the responsibility of deciding for himself whether his personal interest in pending legislation requires that he abstain from voting.'' I have concluded that my holdings in at least two corporations that may benefit if H.R. 5 is enacted into law, coupled with my Chairmanship of the Committee of primary jurisdiction over this legislation, raise legitimate questions concerning whether my participation in this legislation conflicts with my private economic affairs.

While this may be a gray area, questions concerning whether my participation in legislation may raise the appearance of a conflict of interest must be subject to no doubt. As a result, I wish to forcefully dispel any appearance of such a conflict by recusing myself from legislative consideration of H.R. 5.

Participation in the political process, particularly voting on legislation, is central to maintaining the official responsibilities to which Members of Congress are sworn. In all of my public life, I have striven to energetically and conscientiously discharge my official responsibilities while preserving the public trust and confidence I have been elected to uphold.

While House rules may provide an important benchmark for determining the propriety of a Member's decision to vote on legislation before the House, nothing can substitute for a Member's conscience. For this reason, I hereby recuse myself from participation in legislative consideration of H.R. 5 during the 109th Congress.

Mr. LIPINSKI. Mr. Speaker, I rise today in opposition to the closed rule on H.R. 5, the HEALTH Act. There is a need for medical malpractice reform, and the amendments offered in the Rules Committee could have made this a good bill for improving patient access and care. I am deeply disappointed that the Committee refused consideration of all the amendments, including mine that would have reduced the number of malpractice cases in court by facilitating the use of mediation. Mediation has proven to be a cost-effective and timely way to settle malpractice cases. Rush Medical Center in Chicago now has one-third of its cases go to mediation instead of litigation. Other hospitals around the country have begun to implement similar programs, but have been hindered by the lack of mediators with a medical background. My amendment would have provided grants to set up mediation programs and to train medical malpractice mediators. This would have done exactly what this bill purports to do, reduce the burden of litigation. We should have an opportunity to debate this and all the amendments proposed, so I urge my colleagues to vote against this Rule.

Mr. COSTELLO. Mr. Speaker, I rise today in opposition to the rule and to the bill, H.R. 5. Republicans on the Rules Committee blocked the consideration of several amendments offered by me and my colleagues to this bill. This body should have the right to openly discuss and to consider each of these amendments.

One of the amendments blocked was one I offered that is modeled after the state of California's 1975 reform laws (Proposition 103) which has been successful in leveling off insurance rates.

My amendment would require the insurance commissioner or a similar public body in each respective State to hold public hearings when an insurer proposes a rate increase in premiums for medical malpractice liability insurance that exceed 15 percent. If a State has a lower insurance rate than 15 percent, this legislation would not apply.

Mr. Speaker, I believe that the issue of rising medical malpractice insurance premiums is best handled at the state level, as 29 states, including Illinois, have passed legislation to address this problem.

However, if Congress is going to consider legislation, it should be comprehensive. H.R. 5 is not a balanced piece of legislation. Earlier this year, I supported the Class Action Fairness bill because it was a product of bipartisan input and compromise. The bill we are considering today does not contain input from Democrats and fails to take a comprehensive approach to the problem of rising medical malpractice rates.

H.R. 5 is a caps only bill. Numerous studies show that caps alone do not lower insurance rates. According to the Medical Liability Monitor, states with caps on damages have average insurance premiums that are 9.8% higher than insurance premiums in states without caps on damages.

Under H.R. 5 insurance carriers can still raise rates any amount and at any time, without justifying their rate increases. A bill that only places caps on non-economic and punitive damages but does not provide insurance reform will not solve our medical malpractice crisis today.

The insurance industry has been very clear: passing caps on non-economic damages will not result in reduced medical practice premiums. A recent study by the National Council of Insurance Commissioners revealed that medical malpractice carriers in Illinois raised their rates 13% last year, despite the fact that their direct losses only increased 3%.

Serious reform of the insurance industry must be part of any attempt to bring the cost of medical malpractice premiums down.

The material previously referred to by Mr. HASTINGS of Florida is as follows:

PREVIOUS QUESTION FOR H. RES. 385 H.R. 5—MEDICAL MALPRACTICE (''HEALTH'' ACT)

In the resolution strike ''and (2)'' and insert the following

''(2) the amendment printed in Section 2 of this resolution if offered by Representative Emanuel of Illinois or Representative Berry of Arkansas or a designee, which shall be in order without intervention of any point of order or demand for division of the question, shall be considered as read, and shall be separately debatable for 60 minutes equally divided and controlled by the proponent and an opponent; and (3)''

At the end of the resolution add the following new section:

''SEC. 3. The amendment by Representative Emanuel of Illinois and Representative Berry of Arkansas referred to in Section 1 is as follows:

''Strike section 7(c)''.

Mr. GINGREY. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore (Mr. BASS). The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. HASTINGS of Florida. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

PROVIDING FOR CONSIDERATION OF H.R. 3045, DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT IMPLEMENTATION ACT

Mr. DREIER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 386 and ask for its immediate consideration.